



Finance (No. 2) Act 2023

2023 CHAPTER 30

PART 5

ELECTRICITY GENERATOR LEVY

Groups, partnerships and joint ventures

287 Groups

- (1) For the purposes of [this Part](#), the following form a “group”—
 - (a) a company that is not a 75% subsidiary of any other company, and
 - (b) every company that is a 75% subsidiary—
 - (i) of that company,
 - (ii) of a 75% subsidiary of that company, or
 - (iii) of a 75% subsidiary of a 75% subsidiary of that company, and so on.
- (2) The company in a group that is not a 75% subsidiary of any other company is the “principal member” of the group.
- (3) Every other member of the group is a “subsidiary member”.
- (4) A company (“B”) is a “75% subsidiary” of another company (“A”) if—
 - (a) A is beneficially entitled to 75% or more of any profits available for distribution to equity holders of B,
 - (b) A would be beneficially entitled to 75% or more of any assets of B available for distribution to its equity holders on a winding-up, or
 - (c) at least 75% of B’s ordinary share capital is owned directly or indirectly by A.
- (5) Where as a result of the application of each of [paragraphs \(a\) to \(c\)](#) of [subsection \(4\)](#) a company would (ignoring this paragraph) be a member of more than one group, that company is to be treated as only being a 75% subsidiary of the first company it is a subsidiary of applying the rules in those paragraphs in order (starting with [paragraph \(a\)](#)).

Status: This is the original version (as it was originally enacted).

- (6) If at any time a company that is a generating undertaking becomes a member of a group that is a generating undertaking (including a group that becomes a generating undertaking as a result of that company becoming a member), the final qualifying period of the company ends at that time.
- (7) If at any time a group ceases to be a group as a result of the principal member becoming a 75% subsidiary of another group, the final qualifying period of the group ends at that time.

288 Lead member of a group and its qualifying periods

- (1) For the purposes of [section 280\(2\)](#) (meaning of qualifying period), the reference to an accounting period of a generating undertaking that is a group means an accounting period of its lead member.

- (2) Take the following steps in order to identify the lead member of the group (stopping at the first step under which a member of the group is identified as the lead member)—

Step 1

If there is a member of the group that—

- (a) is within the charge to corporation tax, and
- (b) is nominated for the purposes of [this section](#),

that member is the lead member of the group.

Step 2

If the principal member of the group is within the charge to corporation tax, it is the lead member of the group.

Step 3

If—

- (a) there is a member of the group that—
 - (i) is within the charge to corporation tax, and
 - (ii) has no 75% parent within the charge to corporation tax, and
- (b) there is no other member of the group falling within paragraph (a),

that member is the lead member of the group.

Step 4

If there is more than one member falling within paragraph (a) of Step 3, the lead member is the member falling within that paragraph to which the greatest amount of generation would be attributed under [section 282\(1\)](#) in the period of 12 months ending with the later of 31 December 2022 and the beginning of the first qualifying period in which the group is a qualifying generating undertaking if—

- (a) each such member were a generating undertaking, and
- (b) that period of 12 months were a qualifying period.

Step 5

If none of the preceding steps identifies a lead member, the principal member of the group (who will not be within the charge to corporation tax) is the lead member of the group.

- (3) For the purposes of [subsection \(2\)](#), a company (“P”) is a 75% parent of another company if that other company is a 75% subsidiary—

- (a) of P,
- (b) of a 75% subsidiary of P, or

- (c) of a 75% subsidiary of a 75% subsidiary of P, and so on.
- (4) A nomination of a member of a group as the lead member of the group—
 - (a) is to be made by the member of the group that, ignoring Step 1 in [subsection \(2\)](#), would be the lead member of the group (“the nominating member”),
 - (b) must be made by notice to HMRC,
 - (c) must specify when it takes effect, which must be no earlier than the commencement of the qualifying period in which it is made, and
 - (d) has effect until—
 - (i) a further nomination takes effect,
 - (ii) it is revoked, or
 - (iii) the nominated member leaves the group.
- (5) The revocation of a nomination of a member of a group as the lead member—
 - (a) is to be made by the member of the group that, ignoring Step 1 in [subsection \(2\)](#), would be the lead member of the group,
 - (b) must be made by notice to HMRC, and
 - (c) must specify when it takes effect, which must be no earlier than the commencement of the qualifying period in which it is made.
- (6) Where a company becomes lead member of a group during a qualifying period, and that period is not the same as an accounting period of the new lead member—
 - (a) the qualifying period ends, and
 - (b) a qualifying period commences that ends with the end of the current accounting period of the new lead member.

289 Liability of members of groups

Where a generating undertaking that is a group is liable to an amount of electricity generator levy—

- (a) the lead member is liable to pay that amount, and
- (b) every other member is jointly and severally liable for that amount.

290 Election for members with significant minority shareholding to pay levy

- (1) [This section](#) applies where—
 - (a) a generating undertaking that is a group is liable to an amount of electricity generator levy for a qualifying period,
 - (b) a subsidiary member of that group (“the relevant member”) has, at any time in that period, at least one significant minority shareholder,
 - (c) some, or all, of that amount is attributable, on a fair and reasonable basis, to the activities of the relevant member and, if it has one or more relevant subsidiaries, those relevant subsidiaries.
- (2) Where [this section](#) applies, the lead member of the group may elect that so much of the amount as is attributable to the activities of the relevant member and (where it has one or more relevant subsidiaries) its relevant subsidiaries must be paid by that member.
- (3) But the other members of the group are jointly and severally liable for that amount.

Status: This is the original version (as it was originally enacted).

- (4) An election under [this section](#) in respect of an amount of electricity generator levy for a qualifying period must be made no later than 9 months after the end of that period.
- (5) For the purposes of [this Part](#)—
- (a) a person (“P”) is a significant minority shareholder in a subsidiary member of a group (“S”) if P is not a member of the group and—
 - (i) P is beneficially entitled to 10% or more of any profits available for distribution to equity holders of S,
 - (ii) P would be beneficially entitled to 10% or more of any assets of S available for distribution to its equity holders on a winding-up, or
 - (iii) at least 10% of S’s ordinary share capital is owned by P, and
 - (b) a group of companies (other than the group S is a member of) is a significant minority shareholder in S if—
 - (i) members of the group are, between them, beneficially entitled to 10% or more of any profits available for distribution to equity holders of S,
 - (ii) members of the group between them would be beneficially entitled to 10% or more of any assets of S available for distribution to its equity holders on a winding-up, or
 - (iii) at least 10% of S’s ordinary share capital is owned by members of the group.
- (6) For the purposes of [this section](#) and [sections 296](#) and [297](#), a company is a relevant subsidiary of another company if it is a 75% subsidiary of—
- (a) that other company,
 - (b) a 75% subsidiary of that other company, or
 - (c) a 75% subsidiary of a 75% subsidiary of that other company, and so on.

291 Qualifying partnerships

- (1) A “qualifying partnership”, in relation to a generating undertaking, means a partnership that operates a relevant generating station whose partners include—
- (a) in the case of a generating undertaking that is a company, that company, or
 - (b) in the case of a generating undertaking that is a group, at least one partner who is not a member of the group and at least one partner who is a member of the group.
- (2) For the purposes of [subsection \(1\)](#) of [section 282](#), the qualifying proportion for a qualifying period in relation to a generating undertaking that is a company and a qualifying partnership in relation to that undertaking is the proportion of the partnership’s profits represented by the undertaking’s share of those profits.
- (3) For the purposes of that subsection, the qualifying proportion for a qualifying period in relation to a generating undertaking that is a group and a qualifying partnership in relation to that undertaking is the proportion of the partnership’s profits represented by the sum of the shares of those profits of each partner that is a member of the undertaking.
- (4) Part 17 of CTA 2009 (partnerships) applies for the purposes of [this section](#) as it applies for the purposes of corporation tax.

292 Qualifying joint ventures

- (1) For the purposes of [this Part](#) a company (“C”) is a “qualifying joint venture” if—
 - (a) C is not a member of a group other than a group of which it is the principal member, and
 - (b) there are five or fewer persons who between them—
 - (i) hold 75% or more of C’s ordinary share capital, or
 - (ii) in a case where C does not have ordinary share capital, are beneficially entitled to 75% or more of C’s profits available for distribution to equity holders of C.
- (2) In determining whether there are five or fewer such persons as are mentioned in [subsection \(1\)\(b\)](#), the members of a group are treated as if they were a single company.
- (3) A company (“P”) that is not a member of a group is a participant in a qualifying joint venture (“V”) if—
 - (a) P holds 10% or more of V’s ordinary share capital, or
 - (b) in a case where V does not have ordinary share capital, P is beneficially entitled to 10% or more of V’s profits available for distribution to equity holders of V.
- (4) A group of companies is a participant in a qualifying joint venture (“V”) if—
 - (a) a member of that group, or two or more members between them, hold 10% or more of V’s ordinary share capital, or
 - (b) in a case where V does not have ordinary share capital, a member of the group is, or two or more members between them are, beneficially entitled to 10% or more of V’s profits available for distribution to equity holders of V.
- (5) Where a participant in a qualifying joint venture is not a generating undertaking, the participant is to be treated as a generating undertaking for the purposes of [this Part](#).